Filed 12/5/16 P. v. Ray CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. IESHA MICHELLE RAY, Defendant and Appellant.	B261952 (Los Angeles County Super. Ct. No. TA128064)

APPEAL from an order of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Reversed with directions.

Lisa M. Sciandra, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

After pleading no contest to forgery or counterfeiting of a seal and being sentenced to state prison, Iesha Michelle Ray filed a petition to reduce her felony conviction under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18).[1] The trial court denied the petition, concluding Ray's conviction for forging or counterfeiting a seal was not enumerated as one of the types of forgeries to which resentencing should apply. Because we agree that a defendant convicted of forgery or counterfeiting a seal on currency valued at $950 or less may be eligible for resentencing under Proposition 47, we reverse the order denying Ray's petition.

FACTUAL AND PROCEDURAL BACKGROUND

On May 3, 2013, the People charged Ray with forgery or counterfeiting of a seal (§ 472) and forgery (§ 475, subd. (a)).[2]

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[1] Unless otherwise specified, all further statutory references are to the Penal Code.

[2] The charging information was unclear as to what Ray allegedly had counterfeited and forged. Count 1 alleges she committed "the crime of Counterfeit Seal, . . . [by] unlawfully and with intent to defraud, forg[ing] and counterfeit[ing] a U.S. Treasury." It is unclear whether this referred to a U.S. Treasury "Bill," a U.S. Treasury "Note" or U.S. currency. There is no such thing as a "U.S. Treasury." Count 2 alleges that she committed the crime of "Forgery," by "possess[ing] and receiv[ing], with intent to pass and facilitate the passage and utterance of [a] forged, altered, counterfeit and completed bank note." At the resentencing hearing, her counsel stated that both sentences

Ray entered a plea as to both charges and was sentenced to state prison.

On February 3, 2015, Ray filed a petition seeking to reduce her felony conviction[3] to a misdemeanor under Proposition 47. On the petition, she checked the box indicating she was eligible for resentencing because she was convicted of violating "§ 470/473 Forgery." The trial court denied the petition, finding "[t]he statute is pretty specific as to what does and does not come under it, and [section] 472 does not. It's not specifically mentioned, so the court is going to go ahead and deny that." Ray filed a timely appeal.

DISCUSSION

A. *Proposition 47 and the Applicable Code Sections*

"Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been

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were based on her having "counterfeit bills, U.S. currency, $400 worth." For purposes of our analysis, we will assume that Ray had in her possession $400 worth of counterfeit U.S. currency bearing the seal of the U.S. Treasury. It is irrelevant to our ultimate holding whether she in fact was convicted of possession of forged Treasury Bills, Treasury Notes or currency, provided the total value was $950 or less, as bills, notes and currency are all covered under section 473, subdivision (b).

[3] It is unclear whether Ray sought to reduce one or both of the convictions. In the trial court and on appeal, she focuses solely on her conviction of forgery or counterfeiting of a seal in violation of section 472.

designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) To this end, "Proposition 47 (1) added chapter 33 to the Government Code (§ 7599 et seq.), (2) added sections 459.5, 490.2, and 1170.18 to the Penal Code, and (3) amended Penal Code sections 473, 476a, 496, and 666 and Health and Safety Code . . . . (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, §§ 4-14, pp. 70-74.)" (*Ibid.*)

Section 1170.18, subdivision (a), now provides: "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act."[4]

Section 473 previously provided: "Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170." As amended by Proposition 47, the former provisions became subdivision (a). Proposition 47 added subdivision (b)

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[4] Subdivision (b) of section 1170.18 provides additional criteria for determining whether a defendant qualifies for resentencing, including the defendant's prior criminal history, behavior while incarcerated, and whether the defendant poses an unreasonable risk to public safety.

(section 473(b)), which provides in relevant part: "Notwithstanding subdivision (a), any person who is guilty of forgery relating to a check, bond, bank bill, note, cashier's check, traveler's check, or money order, where the value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order does not exceed nine hundred fifty dollars ($950), shall be punishable by imprisonment in a county jail for not more than one year . . . . This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5." (See generally *People v. Salmorin* (2016) 1 Cal.App.5th 738, 743.)

Section 473 does not define the substantive offense of "forgery." Rather, it sets the sentence for substantive forgery offenses defined elsewhere in the Penal Code. Section 470, the general forgery statute, defines acts constituting "forgery" of "any of" a series of documents, which includes the items listed in section 473(b), plus others, such as warrants, promissory notes, contracts, lottery tickets, powers of attorney, and stock certificates. Sections 470a and 470b refer to forgery of driver's licenses and identification cards; sections 471 and 471.5 refer to forgery of records. Section 472 refers to forgery or counterfeiting of "the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this state, or of any other state, government, or country."[5]

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[5] Section 472 provides: "Every person who, with intent to defraud another, forges, or counterfeits the seal of this state, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal

B. *Analysis*

Ray claims that her conviction involved the possession of $400 worth of counterfeit U.S. currency, on which an official seal appeared. She contends that therefore she was convicted of "forgery relating to a bank bill [or] note," bringing her conviction within the types of forgeries that the voters intended to make eligible for resentencing. The courts of appeal have previously ruled, and we agree, that currency constitutes a "bank bill" within the meaning of section 473. (*People v. Mutter* (2016) 1 Cal.App.5th 429, 436 [a "bank bill" is currency]; *People v. Maynarich* (2016) 248 Cal.App.4th 77, 80 [same].) The trial court rejected Ray's argument, finding convictions under section 472 outside of the eligible types of forgery intended for resentencing as not enumerated in section 473(b). We review the trial court's construction of Proposition 47 de novo. (*People v. Salmorin*, *supra*, 1 Cal.App.5th at p. 743.)

"'In interpreting a voter initiative . . . we apply the same principles that govern statutory construction. [Citation.] Thus, "we turn first to the language of the statute, giving the words their ordinary meaning." [Citation.] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]. [Citation.] When the language is ambiguous, "we refer

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authorized or recognized by the laws of this state, or of any other state, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery."

to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." [Citation.]' [Citation.] In other words, 'our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure.' [Citation.]" (*People v. Briceno* (2004) 34 Cal.4th 451, 459.)

We do not interpret statutory language in isolation but interpret it "'in the context of the entire statute of which it is a part, in order to achieve harmony among the parts.'" (*People v. Briceno*, *supra*, 34 Cal.4th at p. 460.) In addition, we interpret a statute """"with reference to the entire scheme of law of which it is [a] part so that the whole may be harmonized and retain effectiveness."""" (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.)

Ray's request for resentencing turns on the meaning of the phrase "relating to" in section 473(b). "The ordinary meaning of these words is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' Black's Law Dictionary 1158 (5th ed. 1979)—and the words thus express a broad . . . purpose." (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383 [112 S.Ct. 2031, 119 L.Ed.2d 157].) "'Related' is a commonly used word with a broad meaning that encompasses a myriad of relationships. For example, a leading legal dictionary defines 'related' to mean 'standing in relation; connected; allied; akin.' (Black's Law Dict. (6th ed. 1990) p. 1288, col. 1.) Similarly, a legal thesaurus lists many synonyms for 'related.' (Burton, Legal Thesaurus (1980) p. 925, col. 2.) In [certain insurance cases], . . . 'related' can denote a causal connection as well as the 'notion of similarity.' [Citation.]" (*Bay Cities Paving & Grading. Inc. v.*

Lawyers' Mutual Ins. Co. (1993) 5 Cal.4th 854, 868 [giving "related" broadest interpretation in insurance policy].) ""Related" is a generous choice of wording, suggesting that interpretation should favor inclusion rather than exclusion in the close case.' [Citation.]" (*Williams v. MacFrugal's Bargains - Close-Outs, Inc.* (1998) 67 Cal.App.4th 479, 482).

Given this common usage, we conclude that the voters intended "related to" to have the broad meaning of "connected to" or "associated with." Had the voters intended a more narrow definition, they could have made section 473(b) read: "any person who is guilty of forgery *of* a check, bond, . . ." instead of "any person who is guilty of forgery *relating to* a check, bond . . . ." By using the more expansive language, the voters are presumed to have intended a more expansive scope to the statute. "[T]o read the statute as defendants suggest would violate the rule that '[i]nterpretive constructions which render some words surplusage . . . are to be avoided.' [Citation.] '[Every] word, phrase and provision employed in a statute is intended to have meaning and to perform a useful function . . . .' [Citations.]" (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681.) "We should strive to give effect and significance to every word and phrase of a statute . . . ." (*Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163. 174.)

With this expansive reading of the term "related to," we find Proposition 47 intended to treat as misdemeanors any type of forgery or counterfeiting activity connected to the specific instruments enumerated in section 473(b): a check, bond, bank bill, note, cashier's check, traveler's check, or money order. Forgery of a false U.S. treasury seal that appears on a bill, note or currency is forgery "related" to those instruments. Indeed,

forgery of the seal is an integral aspect of forging a counterfeit bill, at least one with any possibility of passing as real. Under this same analysis, counterfeiting a corporate seal on a traveler's check or money order would also be "related to" forgery of the underlying financial instrument.

This interpretation of section 473(b) is also consistent with the voters' intent in enacting Proposition 47, which was "to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) As applicable here, the stated intent of Proposition 47 was to: "(1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this act. [¶] . . . [¶] (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes. [¶] (4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors." (*Ibid.*)

There is no reasonable basis for concluding the voters intended to treat the forgery of a seal on a bank bill or note as more serious and deserving of greater punishment than the forgery of the bank bill or note itself. Rather, the language of section 473(b) suggests that as long as the forgery was connected to or associated with any of the listed monetary instruments—

checks, bonds, bank bills, notes, cashier's checks, traveler's checks, or money orders—and the value of the instrument did not exceed $950, it would be considered a misdemeanor for purposes of sentencing.

Moreover, to the extent there is ambiguity in the phrase "relating to," ""[w]hen language which is reasonably susceptible of two constructions is used in a penal law ordinarily that construction which is more favorable to the offender will be adopted. [¶] The defendant is entitled to the benefit of every reasonable doubt, whether it arise[s] out of a question of fact, or as to the true interpretation of words or the construction of language used in a statute." [Citation.]"' (*In re Rosalio S.* (1995) 35 Cal.App.4th 775, 781, quoting *People v. Davis* (1981) 29 Cal.3d 814, 828.) This principle supports an interpretation of section 473(b) to include a conviction of forgery or counterfeiting of a seal under section 472 to the extent the forgery or counterfeiting is related to any of the listed items having a value not exceeding $950. Under this interpretation, a conviction of counterfeiting a seal unconnected to any of these instruments still would remain a crime ineligible for resentencing.

In the People's view, however, section 473(b) must be interpreted more narrowly, applying only to offenses involving the forgery of the particular items listed. They rely on the maxim "*expressio unius est exclusio alterius*—the expression of some things in a statute necessarily means the exclusion of other things not expressed" (*In re Eric H.* (1997) 54 Cal.App.4th 955, 965) and the rule codified in Code of Civil Procedure section 1858 "'that a court must not "insert what has been omitted" from a statute.' [Citation.]" (*People v. Guzman* (2005) 35 Cal.4th 577, 587). Since section 473(b) does not specifically mention a seal,

the People claim forgery of a seal would not fall within that subdivision. (See *People v. Bush* (2016) 245 Cal.App.4th 992, 1001 [omission of § 368 from § 1170.18 means defendant convicted of that offense ineligible for resentencing under Prop. 47]; cf. *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125; *People v. Williams* (1963) 222 Cal.App.2d 152, 155.)

People v. Gray (1979) 91 Cal.App.3d 545, 551, on which the People rely, is distinguishable. *Gray* considered the legislative enactment of former section 12022.7, which imposed an enhanced sentence on any person who "with the intent to inflict such injury, personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony . . . ." The statute expressly excluded four offenses from this enhancement: "murder, manslaughter, assault with a deadly weapon [and] assault by means of force." (*Gray*, *supra*, at p. 551, fn. 4; see also former § 12022.7.) *Gray* held that "'[t]he legislative inclusion of the four crimes as exceptions necessarily excludes any other exceptions [citation],'" a principle that the People argue applies to this case as well. (*Gray, supra*, at p. 551.) The language of former section 12022.7, however, was unambiguous that the enactors intended only four enumerated crimes to be excluded from the three-year enhancement. The Legislature did not use the broad and inclusive term "relating to." Had the Legislature included such language (for example, excluding any crime "relating to" murder from the three-year enhancement), the court in *Gray* might well have found the attempted murder conviction at issue in that case to be excluded from the three-year enhancement.

Our construction of the language in section 473(b) to include the related act of counterfeiting a seal on a bank note does not conflict with the Court of Appeal decisions finding the non-inclusion of certain Penal Code sections in section 1170.18 to preclude resentencing. For example, in *People v. Bush*, *supra*, 245 Cal.App.4th 992, the court held that a defendant convicted of elder abuse under section 368[6] was not entitled to resentencing under Proposition 47 because such conviction was not one of the specified offenses listed for eligibility under section 1170.18. It is true that section 472 also is not listed as one of the offenses explicitly designated for resentencing in section 1170.18. But Proposition 47 expressly singled out section 368 convictions for exclusion from its resentencing goals. As the court pointed out in *Bush*, "Proposition 47 rewrote section 666, adding language to subdivision (b) of section 366, excluding section 368 from the limited punishment under section 666 of one year in jail or

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[6] Section 368, subdivision (b)(1), provides: "Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years."

prison. This reflects Proposition 47 was not intended to provide resentencing for a section 368 crime, because section 368 is considered a more serious offense than the listed theft crimes in section 1170.18. Section 368 punishes offenders who prey on vulnerable elders and dependent adults . . . ." (*Bush*, *supra*, at pp. 1004-1005, fn. omitted.) Proposition 47 did not rewrite any of the forgery statutes to exempt forgery involving a seal, nor is there anything in the Penal Code to indicate forgery of a seal is a more serious offense than forgery of a low denomination bank note bearing a seal. By contrast, section 368 contains prefatory language explaining precisely why the Legislature considered crimes against the elderly or dependent adults to warrant special approbation. (§ 368, subd. (a).)

As we recently explained in *People v. Salmorin*, *supra*, 1 Cal.App.5th at page 747, "Proposition 47 also included a provision requiring that it 'be liberally construed to effectuate its purposes.' [Citations.] One of those purposes is to '[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.' [Citation.] The People's proposed interpretation of section 473, subdivision (b), is not a liberal construction of the statute and does not effectuate the purpose of '[r]equir[ing] misdemeanors instead of felonies.' To the contrary, under the People's proposed interpretation, fewer forgery offenses would qualify as misdemeanors."

Because the trial court found a conviction under section 472 could not qualify for resentencing under Proposition 47, as a matter of law, the trial court never considered whether Ray's conviction falls within the monetary cap imposed by

section 473(b), or whether she is entitled to resentencing given the other criteria set forth in section 1170.18. Accordingly, the order denying Ray's petition must be reversed and the case remanded for Ray to have the opportunity to establish her eligibility for resentencing under Proposition 47. (See *People v. Sherow* (2015) 239 Cal.App.4th 875, 880.) As we reverse, we need not address Ray's denial of due process argument.

DISPOSITION

The order is reversed, and the trial court is directed to reconsider Ray's petition consistent with the views expressed in this opinion.

KEENY, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.